

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

CRL.A.No. 1814 of 2005(B)

**SC.322/2004 of THE COURT OF SESSIONS (ADHOC - II), MANJERI
CP.13/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA**
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APPELLANT: PETITIONER.

**RAJAN, S/O.DASAN, CONVICT NO. 1797,
CENTRAL PRISON, KANNUR.**

BY ADV. ADV.SUNNY XAVIER(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA.

BY PUBLIC PROSECUTOR SRL.K.C.SANTHOSH KUMAR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

CRL.A.NO.1814 OF 2005 ()

Dated this the 25th day of October, 2007

J U D G M E N T

KOSHY,J.

Appellant was convicted and sentenced to imprisonment for life with a fine of Rs.10,000/- for offence punishable under Section 302 of the Indian Penal Code. The allegation was that he murdered his wife Vimala on 22.3.2004. According to the prosecution, on 22.3.2004 at about 7.30 p.m. at Kappil Anapara in Thiruvallur district, accused inflicted injuries on the wife in his residential house by beating with a torch on her head and cutting with a knife and hitting her head on a stone and she succumbed to the injuries while undergoing treatment in the Medical College Hospital on 30.3.2004 and thereby accused has committed offence punishable under Section 302 of IPC. According to the prosecution, his wife and two children aged 11 and 6 were living in the same house. PW1 who gave the F.I.Statement is the sister of the deceased who is residing very

close to the residential house of the accused. She stated that when she was in her house, she heard cry of her sister and children from the neighbouring house at about 7.00 - 7.30 p.m. on 22.3.2004. She rushed there. By the time, PW2 elder son came running to her and stated that mother is being killed. Then she saw the accused chasing the child. When she alarmed, he ran away. When she reached the house of accused, she saw her sister lying in a pool of blood in the courtyard. Because of her cry, the neighbours gathered. She also stated that on enquiry, it was found that deceased Vimala went to her brother's house (Balachandran) against the will of the accused and he also doubted the chastity of the deceased and due to that, accused quarreled with her and inflicted injuries on her head by striking with stone and chopper. The neighbours came there. She, Jayaprakash etc. took her in an auto to the hospital and she died on 30.3.2004 after eight days of treatment. When the police came in the hospital, she being the bystander statement was taken from her and that is Ext.P1. She identified MO3 chopper and stone which she saw at the place of incident. PW1 also deposed in court in accordance with the F.I.Statement. PW2 is the son of the deceased and accused. He was in the house at the time of incident. He

stated that his father caused injuries to the mother by hitting with a stone and knife and her sister cried. Since he was only aged 11 years and a minor, trial court put certain questions to him and he gave rational answers and only after stating about his capacity to give evidence examined him on merits. PW2 is a natural eye witness who was inside the house and he saw the incident of his father inflicting injuries on his mother and he also stated that he ran to PW1 for help. He identified MO3 chopper and MO4 stone. He also stated that father used to ill treat his mother. PW3 is a close neighbour. She deposed that on that fateful day about 7.30 p.m. while she was doing the work in the kitchen she heard abusive wordy quarrel from the house of the accused following the cry of Vimala and the children. She immediately rushed to the courtyard of the house of the accused and witnessed the terrifying incident of accused giving blows on the head of Vimala with a torch. PW3 requested the accused to stop beating. The torch from the hand of the accused fell down and then the accused took a chopper and inflicted cut injury on the side of the head with chopper and Vimala fell down having sustained injuries. Still then the accused caught hold of her hair and hit the head of Vimala forcefully on a stone in the courtyard. The elder son

Baiju seeing the incident alarmed and went outside and she also witnessed the incident in a panic situation. Thereafter the accused ran outside subsequently PW1 and others came to the courtyard and took the injured to the hospital. She also stated that accused used to ill treat the deceased after consuming alcohol expressing doubt over the chastity of the accused. Her evidence completely corroborates the evidence of PWs.1 and 2.

2. PWs.4 and 5 immediate neighbours took her to the hospital. PW9 doctor treated the injured. He stated that she was brought to the hospital on 22.3.2004 and while undergoing treatment she expired on 30.3.2004. He also stated that injuries are grievous and it can be caused by MOs.2, 3 and 4 and PW10 Forensic Surgeon conducted post mortem and issued Ext.P6 post mortem certificate. The following were the antemortem injuries shown in Ext.P6 certificate:

ANTEMORTEM:

I. Scab formed linear wound 4 cm. long vertical over right forehead and head, 6 cm above root of nose and 1 cm outer to midline. Underneath fissured fracture 4 cm long vertical, right frontal bone, lower

end at orbital margin. Multiple linear fractures extending front it to roof of orbit.

ii. Scab formed wound 'Y' shaped over left forehead and temple, extending into face. Each limb of 'Y' measured 5.5 cm, 4 cm and 2 cm. Underneath fracture fragmentation of left zygomatic (Bone of face). Squamous part of temporal bone and floor of orbit.

iii. Sutured healing wound 12 cm long vertical over back of head right side extending up to top of head, lower end 5 cm above mastoid process and upper end 6.5 cm outer to midline. Hair was shaven at this area. Skull bone underneath was intact.

Brain (1200 gm) showed subarachnoid haemorrhage over entire brain, more over left side. Multiple petechial haemorrhages over corpus callosum.

iv. Abrasion 3.5 x 4 cm over back aspect of left elbow.

v. Contusion 7 x 5 cm over inner aspect of left wrist (brownish black).

vi. Contusion 2 x 1.5 cm over front aspect of left ankle (brownish black).

vii. Scab fallen abrasion 5 x 1 cm vertical over abdomen, 3 cm above umbilicus and 1 cm outer to midline.

PW10 deposed that injury nos.1 and 3 are fatal and can be caused by MO2 chopper and injury no.2 can be caused by hitting with MO4 stone and she died due to head injury. In 313 statement, accused did not make any explanation even though

his wife and children were living in the house and incident occurred in the house when he, his wife and children were only there. Evidence of PW2 itself is sufficient for conviction. He was not seriously cross examined. The evidence of PWs.1, 2 and 3 corroborated by medical evidence and evidence of PWs.4 and 5 clearly shows that accused is guilty and we see no ground to interfere in the conviction. Only minimum punishment under Section 302 was imposed. In the above circumstances, we see no ground to interfere in the conviction and sentence imposed on the appellant and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

CRL.A.NO.1814 OF 2005 ()

J U D G M E N T

25th October, 2007